

Environmental Protection Agency

§ 305.25

to the Request for a Hearing upon motion granted by the Presiding Officer.

§ 305.23 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall be in writing; state the grounds therefor with particularity; set forth the relief sought and a proposed order; and be accompanied by an affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 305.5(b)(2)(i).

(b) *Response to motions.* A party's response to any written motion must be filed within 10 days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter time for response, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer, or Chief Administrative Law Judge, in the absence of a Presiding Officer, shall rule on all motions. Oral argument on motions will be permitted in the discretion of the Presiding Officer. See § 305.4(a) concerning motions to extend the time limit for final orders.

§ 305.24 Default order.

(a) *Default.* A party may be found to be in default: after motion, upon failure of the Claims Official to file a timely answer to the Request for a Hearing; after motion or *sua sponte*, upon failure to comply with a pre-hearing or hearing order of the Presiding Officer; or after motion or *sua sponte*, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of failure to appear at a hearing shall be made against the Claims Official unless the Requestor presents sufficient evidence to the Presiding Officer to establish a *prima facie* case in support of his claim. Any motion for a default order shall include a proposed default order and shall be served upon

all parties. The alleged defaulting party shall have 10 days from service to reply to the motion. Default by the Claims Official constitutes, for purposes of the pending action only, an admission of all facts alleged in the claim and a waiver of his right to a hearing on such factual allegations. Default by the Requestor may result in the dismissal of the Request for a Hearing with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. The default order shall constitute the final order in the proceeding, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order; conclusions regarding all material issues of law; costs to be assessed pursuant to § 305.36, if applicable; and, the amount to be awarded the claimant, if any.

(d) *Setting aside a default order.* For good cause shown, the Presiding Officer may set aside a default order.

§ 305.25 Informal settlement; voluntary agreement.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Settlement conferences shall not affect the Claims Official's obligation to file a timely answer under § 305.22.

(b) *Voluntary agreement.* The voluntary agreement shall state that, for the purpose of this proceeding, the Claims Official consents to the award of a sum certain to the Requestor or in the case of no award, that both parties agree to settle the matter. The voluntary agreement shall include an order acceptable to both the Requestor and EPA, and shall be signed by all parties or their counsel or representatives. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.